

EXHIBIT 3

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF VIRGINIA
4 NORFOLK DIVISION

5 MDL No. 2:18-md-2836

6 -----x
7 IN RE: ZETIA (EZETIMIBE) ANTITRUST
8 LITIGATION

9 -----x
10 This Document Relates to:

11 All Direct Purchase and Retailer Actions
12 -----x

13
14
15 VIDEOTAPED STENOGRAPHIC DEPOSITION OF:
16 PAUL J. McCROREY
17 Tuesday, November 12, 2019
18 Princeton, NJ
19 9:10 a.m. - 1:03 p.m.

20 Reported in stenotype by:
21 Rich Germosen,
22 CCR, CRCR, CRR, RDR, NYACR, NYRCR
23 NCRA/NJ/NY/CA Certified Realtime Reporter
24 NCRA Realtime Systems Administrator
25 Job No. 171883

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P R O C E E D I N G S

9:10 a.m.

Princeton, New Jersey

THE VIDEOGRAPHER: Stand by, please.

This deposition is now beginning.

The date, November 12, 2019. The time, 9:10. This is the deposition of Paul McCrorey taken in the matter of Zetia Antitrust Litigation.

Counsel will now introduce themselves.

MR. DEMUTH: Good morning. My name is Brad Demuth. I'm with the law firm Faruqi & Faruqi LLP. I'm here on behalf of the Direct Purchaser Class Plaintiffs. With me on the phone is Hannah Schwarzschild from the law firm Hagens Berman Sobol & Shapiro, and to my left?

MS. ROBERTSON: Sharon Robertson, Cohen Milstein Sellers & Toll on behalf of Direct Purchaser Class.

MR. RADICE: John Radice from the Radice Law Firm on behalf of the Direct Purchaser Class Plaintiffs.

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2 analyses they were asking you to undertake?

3 MR. LIVERSIDGE: I'm going to

4 instruct you not to answer.

5 (Direction not to answer the

6 question.)

7 A. I've been instructed not to answer by

8 counsel.

9 Q. All right.

10 MR. DEMUTH: Let's mark another

11 exhibit. Let's mark this one.

12 We're at five.

13 (Whereupon, clawed back document, is

14 received and marked as Exhibit 5 for

15 Identification.)

16 (Whereupon, document MRKZETIA

17 R000061917, is received and marked as Exhibit 6 for

18 Identification.)

19 CERTIFIED STENOGRAPHER: Number five.

20 MR. DEMUTH: Let's do number six as

21 well while we're at it. Sorry.

22 CERTIFIED STENOGRAPHER: Number six.

23 THE WITNESS: Thank you.

24 MR. LIVERSIDGE: So I'm going to

25 withdraw number five on privilege grounds.

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2 MR. DEMUTH: What's your basis?

3 MR. LIVERSIDGE: This is the same
4 project that the Court has already found was done at
5 the request of counsel and so all of these
6 communications are privileged.

7 MR. DEMUTH: Let's go off the record
8 for just a moment, please.

9 THE VIDEOGRAPHER: We are now going
10 off the video record. The time is 11:40.

11 (Whereupon, a recess is taken.)

12 MR. DEMUTH: So back on the record.

13 THE VIDEOGRAPHER: Do you want me to
14 get the witness?

15 MR. DEMUTH: No, this is outside of
16 the witness.

17 THE VIDEOGRAPHER: You don't want
18 this on the video?

19 MR. DEMUTH: You don't have to roll.

20 THE VIDEOGRAPHER: Okay. Thanks.
21 That's what I thought.

22 MR. DEMUTH: All right. We're back
23 on the record. The time is 12:01.

24 Mr. Liversidge and I are in a dispute
25 regarding what's been marked McCrorey number five,

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2 which is a document produced at MRKZETIA,
3 underscore, R000080384, which Mr. Liversidge at
4 today's deposition has clawed back under the
5 protective order. It is my understanding that
6 McCrorey five is the document that was presented in
7 open court at the hearing on the clawback motion
8 practice and was also submitted to the Court in
9 connection with the reply briefing in that, and
10 that, therefore, there is no basis for the clawback,
11 and Mr. Liversidge has a different point of view,
12 and I'll turn the floor to Mr. Liversidge to make
13 his record.

14 MR. LIVERSIDGE: Yeah. Our position
15 is that the document is privileged. It is part of
16 the project that the Court has already determined
17 was done at the request of counsel. It is similar
18 to other documents that have been withheld, and at
19 least, speaking for myself, I was not aware that
20 this document had been submitted to the Court as
21 part of prior briefing, although we will certainly
22 take a look at that, but for purposes of today, our
23 position is that the document is privileged and we
24 would withdraw it under the protective order.

25 MR. DEMUTH: As to other documents

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like this, plaintiff's position is to the extent McCrorey five is public, as we contend, that would tend to undermine the privilege claims that exist in other documents that have been similarly withheld as privilege.

MR. LIVERSIDGE: We'd obviously disagree with that. There's been no intent to waive privilege on any of this. I think the opposite is true. So that is our position.

MR. DEMUTH: We can go off the record, unless anyone else has anything to say.

(Whereupon, a recess is taken.)

THE VIDEOGRAPHER: Stand by, please.

Back on 12:04.

MR. DEMUTH: All right.

BY MR. DEMUTH:

Q. McCrorey five we're not going to talk about. You can put that aside.

A. Okay.

Q. We're going to talk about McCrorey six.

A. Six. Okay.

MR. LIVERSIDGE: McCrorey five should probably be withdrawn from the deposition exhibits.